

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:)
LYNN DAMON CRUMB) **CASE NO. 10-81149**
VERNA MAE CRUMB) **CHAPTER 13**
 DEBTORS)

VERNA CRUMB)
 Plaintiff) **Adversary Case No: 11-09025**
v.)
))
BAC HOME LOANS SERVICING, L.P.,)
f.k.a. Countrywide Bank, F.S.B.)

ORDER

This matter came before the Court on the Motion for Summary Judgment (the “Motion”) filed by Defendant BAC Home Loans Servicing, L.P. (“BAC” or “Defendant”) on September 1, 2011, pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure and Rule 56(b) of the Federal Rules of Civil Procedure. The Court considered the pleadings of record, the Motion, and the supporting brief filed by BAC. Plaintiff Verna Crumb did not file a response to the Motion. The Court finds and concludes that there is no genuine issue as to any material fact and that Defendant BAC Home Loans Servicing, L.P. is entitled to judgment in its favor as a matter of law.

It is, Therefore, Ordered Adjudged and Decreed as follows:

1. That the Motion for Summary Judgment filed by Defendant BAC Home Loans Servicing, L.P. is granted as set forth below.
2. Plaintiff Verna Crumb’s claim for rescission of the January 31, 2008 loan transaction between Debtors and BAC is denied as untimely because she did not provide notice of her intention to rescind within three business days, as required by 15 U.S.C. § 1635(a).

3. Plaintiff is not entitled to an extended three-year time period to rescind under 15 U.S.C. § 1635(f) because this extended period only applies if the requisite information and forms under the Truth in Lending Act were not provided.

4. The Notice of Right to Cancel attached to the Complaint is valid because it clearly and conspicuously discloses the Debtors' rescission rights. *See In re Zohbe*, 2008 Bankr. LEXIS 1394, at *3 (Bankr. N.D. Ga. Mar. 25, 2008).

5. Plaintiff has not presented any evidence to overcome the presumption of receipt of the proper number of copies of the Notice of Right to Cancel established by the signatures on the Notice of Right to Cancel below the line, "The undersigned each acknowledge receipt of two copies of NOTICE of RIGHT TO CANCEL and one copy of the Federal Truth in Lending Disclosure Statement." *See Marr v. Bank of Am.*, 2011 U.S. Dist. LEXIS 10749, at *9, 14 (E.D. Wis. Feb. 3, 2011); *Stallman v. Countrywide Home Loans, Inc.*, 2011 U.S. Dist. LEXIS 9516, at *13 (N.D. Ohio Feb. 1, 2011).

6. Even had Plaintiff presented such evidence, the Notice of Right to Cancel attached to the Complaint indicates BAC "substantially complied with all requirements of TILA in notifying the [borrowers] of their right to rescission." *Am. Mortg. Network, Inc. v. Shelton*, 486 F.3d 815, 821 (4th Cir. 2007).

7. Even if Plaintiff's claim for rescission were not untimely, rescission would be improper in this context because it would not restore the parties to the status quo, and would deprive BAC of its legal due. *See Am. Mortg. Network, Inc. v. Shelton*, 486 F.3d 815, 820-21 (4th Cir. 2007); *Powers v. Sims & Levin*, 542 F.2d 1216, 1221-22 (4th Cir. 1976); *see also Byron v. EMC Mortg. Corp.*, 2009 U.S. Dist. LEXIS 69589, at *2-3, 11 (E.D. Va. Aug. 10, 2009) (refusing to allow rescission after deeming the lender's provision of one copy of a rescission notice instead of two to be a "hypertechnical violation of the notice requirement.").

8. That the Complaint Objecting to Secured Claim is dismissed, and that BAC Home Loans Servicing, L.P.'s claim based on the 2008 loan transaction will be treated as a secured claim in accordance with the Proof of Claim filed by BAC Home Loans Servicing, L.P. on August 10, 2010 in the corresponding bankruptcy action (Case No. 10-81149).

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